



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
Office of the City Attorney  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2015-13777

Dear Mr. Kopp:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 571505 (COSA File NO. W078618).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified case number. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You inform us the department received the request for information on April 16, 2015, and that the department was closed for business on April 24, 2015. Thus, the department's ten-business-day deadline to request a ruling was May 1, 2015. However, the envelope containing your request for a ruling from this office is metermarked May 6, 2015. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Accordingly, we will consider whether this section requires the department to withhold the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

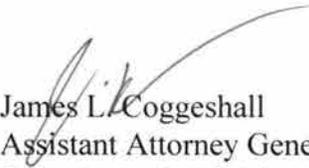
Fam. Code § 261.201(a). The department asserts the requested information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this

type of information. Therefore, we assume no such rule exists. Given that assumption, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 571505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)